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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17

18 ELLEN THOMAS, an individual,
19 Plaintiff,

20 vs.

21 NORTHROP GRUMMAN
22 CORPORATION; NORTHROP
GRUMMAN PLANS
23 ADMINISTRATIVE COMMITTEE;
NORTHROP GRUMMAN
24 ELECTRONIC SYSTEMS-SPACE
DIVISION CONSOLIDATED
25 PENSION PLAN; NORTHROP
GRUMMAN ERISA SUPPLEMENTAL
26 PLAN,

27 Defendants.
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Case No. 2:15-cv-02115-PSG-FFMx

DISCOVERY MATTER

**[PROPOSED] PROTECTIVE
ORDER GOVERNING THE
TREATMENT OF
CONFIDENTIAL INFORMATION**

1 The Court hereby adopts the protective order stipulated to by the parties
2 (Dkt. No. 38).

3 IT IS HEREBY ORDERED AS FOLLOWS:

4 1. This Protective Order Governing the Treatment of Confidential
5 Information (the "Protective Order") shall govern the handling of all documents,
6 testimony, and discovery responses, including all copies, excerpts, and summaries
7 thereof (collectively "Material"), provided during the course of the above-
8 captioned matter (the "Litigation") by the Parties to the Litigation or by non-
9 parties, either voluntarily, or as required by discovery requests made pursuant to
10 the Federal Rules of Civil Procedure.

11 2. The provisions of this Protective Order shall apply to any "person,"
12 which, as used herein, shall include (a) all parties to the Litigation, and (b) any
13 other individual, person, or entity receiving, producing, or disclosing Material in
14 the Litigation.

15 3. Whether or not designated as "Confidential Material," as defined in
16 paragraph 5, all documents and information obtained through this lawsuit shall be
17 used only for the purposes of investigating, preparing for, and conducting the
18 Litigation in which such Material is produced, including any appeals thereof, and
19 shall not be used by the Parties or any other person for any commercial, business,
20 competitive, or other purpose without the prior written consent of the Producing
21 Party or their counsel.

22 4. This Protective Order shall not apply to any document, testimony, or
23 other information that (a) is already in the receiving Party's possession at the time
24 it is produced other than as a result of a breach of legal obligation, (b) becomes
25 generally available to the public other than as a result of disclosure in violation of
26 this Order or in breach of any other legal obligation, or (c) becomes available to a
27 Party through any means other than the Litigation.

1 5. Any person who produces Material (a “Producing Person”) may at
 2 any time designate as “Confidential” any non-public Material that such person
 3 produces in the course of the Litigation that such Producing Person believes in
 4 good faith contains (a) a trade secret or other confidential or proprietary research,
 5 development, financial, or commercial information or private, personal, or other
 6 information entitled to be treated as confidential under Fed. R. Civ. P. 26(c); (b)
 7 any information in the custody, possession, or control of a Producing Person, the
 8 disclosure of which, absent this Protective Order, could constitute a violation of
 9 any third party’s right of privacy or otherwise violate an obligation of
 10 confidentiality that such Producing Person owes to a third party; and/or (c) any
 11 information and know-how which, by the nature of the circumstances surrounding
 12 disclosure, ought in good faith to be treated as proprietary or confidential.

13 In addition, any Party may designate as “Confidential” any Material that is
 14 produced by any other Party or any third party that such Party believes in good
 15 faith contains a trade secret or other confidential or proprietary research,
 16 development, financial, or commercial information or private, personal or other
 17 information entitled to be treated as confidential under Fed. R. Civ. P. 26(c). Each
 18 Party shall have fifteen (15) business days from the receipt of any Material
 19 produced by any other Party or any third party to designate any such Material as
 20 “Confidential.” During this fifteen (15) day period, any person receiving any such
 21 Material shall treat that Material as “Confidential” under the terms of this Order.
 22 Any Material designated as “Confidential” in accordance with this Order also will
 23 render “Confidential” any copies, excerpts, summaries, or other documents
 24 reflecting or referring to the substance or contents of such Material (“Confidential
 25 Material”), subject to the provisions of paragraph 4 of this Order.

26 6. If Material is inspected at the Producing Person’s choice of location,
 27 all such Material shall be presumed at such inspection to have been designated as
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1 Confidential Material by the Producing Person until such time as the Producing
2 Person provides copies to the Party who requested the Material. However,
3 production of Confidential Material for inspection and copying shall not constitute
4 a waiver of confidentiality and a designation of material as Confidential may occur
5 after production.

6 7. Confidential Material shall be subject to the following restrictions:

7 (a) Confidential Material shall not be given, shown, made available,
8 or communicated in any way to anyone except those persons specified in
9 sub-paragraph (b) below to whom it is necessary that such Confidential
10 Material be given or shown for the purposes permitted under paragraph 3
11 above.

12 (b) Confidential Material may be disclosed, for the purposes set
13 forth in paragraph 3 above, only to a "Qualified Person," defined as follows:

14 (i) counsel of record for the Parties and attorneys, clerical,
15 paralegal and other staff employed by such counsel who are assisting
16 in the conduct of the Litigation;

17 (ii) the Parties and those officers and employees of the
18 Parties deemed necessary to aid counsel in the conduct of the
19 Litigation, subject to paragraph 8 below;

20 (iii) witnesses (other than Parties) during any interview,
21 deposition, hearing, or informal meeting conducted by counsel for a
22 Party subject to Paragraph 8 below;

23 (iv) such consultants and experts retained by the Parties, or
24 their respective counsel, as they, in good faith, deem necessary to
25 provide assistance in connection with the conduct of the Litigation,
26 subject to paragraph 8 below;

27 (v) the Court, court personnel, and jurors, subject to
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1 paragraph 15 below;

2 (vi) court reporters and their employees used in connection
3 with the conduct of the Litigation;

4 (vii) mediators and their employees used in connection with
5 any efforts to mediate the Litigation;

6 (viii) the Secretaries of Labor and the Treasury or their
7 departments, but only to the extent that such disclosure is required by
8 law.

9 (c) Confidential Material produced under the terms of this
10 Protective Order shall be provided to counsel, consultants, or expert
11 witnesses employed by the Parties only for the purpose of investigating,
12 preparing for, and conducting this Litigation, including any appeals thereof.
13 If any such counsel, consultant, or expert witness also is counsel, a
14 consultant, or an expert witness in another matter, such counsel, consultant
15 or expert witness shall not use any Confidential Material produced under the
16 terms of this Protective Order in the other matter or in any other litigation or
17 administrative proceeding.

18 8. Except for the Parties, those persons described in subparagraphs
19 7(b)(ii) through 7(b)(iv) above to whom Confidential Material is disclosed shall
20 first be provided with a copy of this Protective Order and advised that such
21 Confidential Material is being disclosed pursuant to the terms of this Protective
22 Order and that Confidential Material may not be disclosed other than pursuant to
23 the terms set forth herein. Excluding those persons described in subparagraph
24 7(b)(v), any person to whom Confidential Material is disclosed shall further
25 execute the attached "Agreement and Certification to Abide by Protective Order
26 Governing the Treatment of Confidential Information" ("Certification") before
27 such person may be given access to Confidential Material. It shall be the
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1 responsibility of counsel providing such access to Confidential Material to provide
2 each person to whom Confidential Material is disclosed a copy of this Protective
3 Order and the attached Certification, and to retain a signed copy in counsel's files.
4 Any person to whom Confidential Material is provided pursuant to this paragraph
5 shall destroy such Confidential Material no later than sixty (60) days after the
6 termination of the Litigation, including any appeals thereof, or written
7 confirmation of same.

8 9. If a Party inadvertently discloses Confidential Material to persons
9 who are not Qualified Persons, such disclosure shall be reported in writing to the
10 Producing Person who originally produced the inadvertently disclosed Confidential
11 Material. In that event, counsel for the Party making the inadvertent shall make all
12 reasonable efforts to retrieve the Confidential Material and any documents
13 containing such Confidential Material and to obtain the agreement of the person(s)
14 to whom inadvertent disclosure was made to treat the Confidential Material in
15 accordance with the terms of this Protective Order.

16 10. All documents, things, and other materials that are produced in the
17 Litigation, whether voluntarily or as required under the Federal Rules of Civil
18 Procedure, that contain Confidential Material, shall bear a stamp stating
19 "CONFIDENTIAL" on each page of any such document or on a sticker affixed to
20 any such tangible thing or other material. It shall be the responsibility of the
21 Producing Person to cause all Confidential Material to be stamped at the time such
22 Confidential Material is produced.

23 11. If Material alleged to be "Confidential" is inadvertently produced
24 without a "Confidential" designation, such production, in and of itself, shall in no
25 way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of
26 confidentiality to which the Producing Party would otherwise be entitled. As soon
27 as practicable, a Producing Person shall notify the person receiving the
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1 Confidential Material (“Receiving Party”) in writing, of its inadvertent production
2 of Confidential Material without the appropriate designation, identifying the
3 Material with reasonable particularity.

4 Upon receiving such written notification, the Receiving Party shall treat the
5 Material identified in the written notification as “Confidential” in accordance with
6 the terms of this Protective Order. Within ten (10) business days of sending such
7 written notification, the Producing Person may either obtain agreement from the
8 Receiving Party that the Material will be treated as “Confidential” pursuant to the
9 terms of this Protective Order, or, if such agreement is not obtained, apply to the
10 Court for an Order requiring that the Material identified in the written notification
11 be treated as “Confidential” in accordance with the terms of this Protective Order.
12 If no such agreement is reached or application is made within the time permitted,
13 the Receiving Party need no longer treat the Material identified in the written
14 notice as Confidential. However, if such an application is made within the time
15 permitted, the Receiving Party shall continue to treat the Material identified in the
16 written notification as Confidential until such time as the application is finally
17 resolved by the Court. Any Receiving Party may oppose an application by a
18 Producing Person to have previously undesignated Material treated as
19 “Confidential” under this Order on any grounds, including the ground that a waiver
20 has occurred, except that no Party shall assert as a ground for opposing such an
21 application the fact or circumstance of the inadvertent production. Subject to the
22 foregoing, any claim by a Party that Confidential Material has been inadvertently
23 produced shall be governed by the applicable Federal Rules of Civil Procedure,
24 Local Civil Rules of the United States District Court for the Central District of
25 California, and any other controlling law.

26 12. In the event Material alleged to be protected by the attorney-client
27 privilege or work product doctrine is inadvertently produced, the following shall
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1 apply:

2 (a) Upon written notice by the Producing Person within ten (10)
3 business days of learning of the inadvertent or unintentional disclosure of
4 information protected by the attorney-client privilege or that constitutes
5 attorney work product, any such Materials shall be specified by identifying
6 the Bates number designations or such other information as to reasonably
7 describe the Material, the Producing Person shall notify the Receiving Party
8 that such Material was unintentionally disclosed. Such inadvertent or
9 unintentional production, absent a further court order, shall not constitute a
10 waiver of the attorney-client privilege or work product immunity.

11 (b) Thereafter, the Receiving Party shall return within five (5)
12 business days the originals and all copies of the Material specified in the
13 aforesaid written notice, subject to paragraph (c) below.

14 (c) If, however, the Receiving Party disagrees that the Material is
15 protected from disclosure by the attorney-client privilege or work-product
16 immunity, or asserts that there has been an intentional waiver of privilege
17 which encompasses the Material, the Receiving Party may keep one (1) copy
18 of such Material while it moves the Court, within fifteen (15) business days
19 of the Producing Person's written notice of inadvertent or unintentional
20 disclosure, for an order that such Material be produced, in which case, the
21 Party claiming the privilege or immunity shall have the burden of proving
22 that such privilege or immunity exists. The Receiving Party shall not use or
23 rely upon any such Material until after the resolution of any such motion by
24 the Court.

25 (d) If the Receiving Party fails to file the aforesaid motion in a
26 timely fashion, then the Receiving Party, within three (3) business days after
27 the time to file said motion has expired, will return the originals and all
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1 copies of the Materials that were not returned pursuant to Paragraph 12(b)
2 herein.

3 13. In the event it becomes necessary at a deposition or hearing to show
4 any Confidential Material to a witness, as described in sub-paragraph 7(b)(iii)
5 above, any testimony related to the Confidential Material shall be deemed to be
6 Confidential Material, and the pages and lines of the transcript that set forth such
7 testimony shall be stamped as set forth in paragraph 10 of this Order.

8 14. Information or testimony disclosed at a deposition may be
9 designated as Confidential Material by the person providing such testimony, by a
10 Party, or by a Producing Person, if such person either:

11 (a) identifies on the record at the deposition those portions of the
12 testimony that are designated as Confidential Material; or

13 (b) provides written notification to all Parties within ten (10)
14 business days after the transcript is mailed as to those pages and lines of the
15 transcript that are designated as Confidential Material. The entire transcript
16 of any deposition shall be treated as Confidential Material until ten (10)
17 business days after receipt of the deposition transcript. Each page of
18 deposition transcript designated as Confidential Material shall be stamped,
19 as set forth in paragraph 10 above, by the court reporter or counsel.

20 15. All documents, things, testimony, and discovery responses stamped
21 as set forth in paragraphs 10 and 14 that are filed with the Court or attached to any
22 pleadings, motions, or other papers filed with the Court shall be **submitted for**
23 **filing** ~~filed~~ (FFM) under seal by filing a written application in accordance with
24 Local Rule 79-5.1 and kept under seal until further order of the Court. Where
25 possible, only those portions of filings with the Court that disclose matters stamped
26 "Confidential" shall be filed under seal.

27 16. No Party concedes that any Material designated by any other person
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1 as Confidential Material under any provision of this Order does, in fact, contain or
2 reflect trade secrets, proprietary, or confidential information or has been properly
3 designated as Confidential Material, and entering into this Order shall not
4 prejudice, in any way, the right of a Party to seek at any time a determination by
5 the Court of whether any particular Material should be subject to the terms of this
6 Order. If the Court determines that any Material designated as confidential is not
7 confidential, any Receiving Person may treat the material without any restriction.

8 17. A Party shall not be obligated to challenge the propriety of the
9 designation of Material as Confidential Material at the time made, and failure to
10 do so shall not preclude a subsequent challenge thereof.

11 18. Should any non-party seek access to Confidential Material
12 produced in the Litigation by request, subpoena, or otherwise, the Party or other
13 recipient of the Confidential Material from whom such access is sought, as
14 applicable, shall promptly notify the Producing Person who produced such
15 Confidential Material of the requested access. If any Receiving Party (a) is
16 subpoenaed in another action; (b) is served with a demand in another action to
17 which he or it is a party; or (c) is served with any other legal process by one not a
18 party to this Litigation seeking Confidential Material which was produced, the
19 Receiving Party shall give actual written notice, by hand or facsimile
20 transmission, within five (5) business days of receipt of such subpoena, demand,
21 or legal process, to those who produced or designated the material. The Receiving
22 Party shall not produce any of the Producing Person's Confidential Material,
23 unless ordered by a court to do so, until the later of (i) the date of production
24 specified in, or required by, the subpoena, demand, or other legal process; or (ii)
25 the date that any objection by the Producing Party to production of the
26 Confidential Material is resolved by the Court. The Producing Person shall be
27 solely responsible for asserting any objection to the requested production. Subject
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1 to the limitations set forth above, nothing in this Order shall be construed as
2 authorizing a party to disobey a lawful subpoena issued in another action.

3 19. Any dispute that may arise under this Protective Order, including any
4 effort to contest the designation of Confidential Material, shall be resolved by
5 motion before the Court upon not less than fifteen (15) days written notice, or such
6 other notice period as the Court may order, to the Parties and the Producing Person
7 who produced the Confidential Material at issue. Any motion to resolve any
8 dispute arising under this Protective Order shall follow the requirements of Local
9 Rules 37-1 and 37-2.

10 20. Prior to the use of any Confidential Material at any hearing to be
11 held in open court, counsel who desires to use such Confidential Material shall
12 take reasonable steps to afford opposing counsel and counsel for the Producing
13 Person who produced such Confidential Material a reasonable opportunity to
14 object to, or seek other remedial measures in connection with, such use.

15 21. This Order shall continue to be binding throughout and after the
16 conclusion of the Litigation, including any appeals.

17 22. This Order shall be without prejudice to the rights of a Producing
18 Person to seek further limits on disclosure or protections for the confidentiality
19 of any Confidential Material in addition to the limits and protections provided
20 herein, including, without limitation, that access to, or disclosure of, any
21 Confidential Material be limited solely to counsel employed by a Party or to
22 other specified persons and without prejudice to the rights of any other person to
23 contest such application.

24 23. Notwithstanding any provision contained herein, nothing in this
25 Order shall restrict in any way the right of a Party to make use of its own Material
26 (including his, her, or its deposition testimony, or the deposition testimony of any
27 of its employees or agents) in any way it deems fit. Within sixty (60) days after
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1 the conclusion of the Litigation, including all appeals, all Confidential Material,
2 and copies thereof shall be destroyed. Counsel for the applicable Parties shall
3 certify, in writing, that all such Confidential Material within their possession or
4 control has been destroyed. Notwithstanding the foregoing, counsel for the
5 Parties may retain pleadings, other papers filed with the Court or served in the
6 course of the Litigation, interrogatories and responses, requests for production
7 and the responses thereto, deposition transcripts and work product, subject to the
8 limitations concerning their use stated herein.

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10 DATED: October 20, 2015

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12 /S/ FREDERICK F. MUMM
13 Honorable Frederick F. Mumm
14 United States Magistrate Judge
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